IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2944 OF 2002

A.M. Attar,
Adult, Indian Inhabitant,
Residing at C/o. S.A. Attar,
Railway Quarters,
R.B. II-7/6, Mazgaon,
Byculla, Mumbai 400 008. ... Petitioner

Versus

1. Union of India,
through General Manager,
Central Railway Head Quarters
Office, Mumbai 400 002.

2. Divisional Railway Manager (T),
Division Office, Central Railway,
C.S.T. Mumbai 400 001 ... Respondents

Mr. S.S. Karkera for Petitioner.

Mr. T.J. Pandian for Respondents.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : FEBRUARY 17, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

. The Petitioner was working as a Guard in Central Railway. The Petitioner was allotted quarters at Byculla, Mumbai. The Petitioner retired from services on 28.2.1997 on superannuation. Whilst Petitioner was in service, the Petitioner’s son was appointed as a turner in the Central Railway, Matunga Workshop, Mumbai

in the year 1988. The son after his appointment was also residing with the petitioner with the permission of the Railway Authorities, without claiming house rent from respondents. Before retirement of the petitioner, Petitioner along with his son had made an application for transferring the quarter allotted to him in the name of his son. Similar request was made by the Petitioner before his retirement by application dated 24.2.1997. The request was not considered. The Petitioner's son was however, allotted independent premises. The Petitioner was however, allowed to retain the premises till 30.6.1997 on the basis of rent and thereafter from 1.7.1997 to 30.10.1997 on medical grounds.

2. It is the case of the Petitioner that the Railway Authorities by communication dated 1.1.1998 intimated to Petitioner's son that his application for transfer from father to son was sanctioned and that the Railway quarters situated at MGN No. RBII-7-30 was transferred in his name from 30.12.1997. The Petitioner was occupying the quarter bearing No. RB-III(3)/2. It is the further case of the Petitioner that the quarter allotted to his son was lower type premises and not

equivalent to the Premises in occupation of the Petitioner. The Petitioner's son in the matter of his allotment of premises lower than his entitlement filed a petition being O.A. No. 968 of 1998 before the Central Administrative Tribunal (C.A.T.). That was rejected by order dated 10.12.1998. Aggrieved, his son preferred petition being W.P.No. 1526 of 1999. The Petition was dismissed by order dated 10.6.1999.

3. By letter dated 26.2.1998 (1.4.1998) the Senior Divisional Personnel Office, C.S.T. informed the Petitioner that though he had been retired on superannuation, he had been continuously in occupation of the quarter allotted to him from 1.11.1997. The Petitioner was called upon to hand over the possession of the quarters within seven days and on failure to vacate the quarters, the case would be referred to the Estate Officer for eviction. Proceedings were thereafter initiated under the provisions of the Public Premises Eviction Act. The Petitioner pursuant to notice remained present and submitted that higher type of quarters had been allotted to other officials, who were having lower pay scale and not eligible for allotment. That though his son was entitled as per

revised pay scale for entitlement of transfer of quarters on father to son basis the same was not considered.

. By order dated 5.8.1998 the Estate Officer directed Petitioner's eviction. The Petitioner aggrieved preferred an appeal being Appeal No. 97 of 1998. On hearing the appeal the matter was remanded back to the Estate Officer. Consent terms came to be filed. Consent terms provided that the Petitioner would vacate the suit premises latest by 1st week of July, 1999. In view of that respondents agreed to withdraw the entire proceedings and an order came to be passed accordingly. The Petitioner in terms of the consent terms surrendered the premises on 31.7.1999.

4. After vacating the premises, the Petitioner by letter dated 9.8.1999 made a request for releasing his D.C.R.G. According to Petitioner, the respondents without considering representation or request, deducted rent in respect of the quarters being an amount of Rs.79,712.17 and remitted the balance amount to the Petitioner. According to Petitioner, he was entitled to the amount of Rs.2,50,000/-. Aggrieved, Petitioner

preferred Original Application before C.A.T. C.A.T. by its order dismissed Original Application by order dated 5.9.2000. This petition is preferred against the said order.

. The learned tribunal by its order dismissing the Original Application dealt with the contention of the Petitioner that infliction of penal rent can only be done in proceedings initiated under the provisions of the Public Premises Act. The learned tribunal considering the judgements cited and the rules of allotment pertaining to residential accommodation held that the Petitioner was not entitled to any relief and consequently dismissed the application. It is this order which is the subject matter of the present petition.

5. At the hearing of this petition, on behalf of the Petitioner, their learned counsel makes a statement that the respondents could not have deducted the amount for over stay i.e. penal rent without the amount being admitted and or adjudicated by a competent forum. In as much as the said amount was deducted without following procedure, the impugned order is liable to be

set aside.

. In support, the learned Counsel has relied on the judgment of the Apex Court in the case of Union of India & Ors. Vs. Madan Mohan Prasad, 2002 (2) S.C.Service Law Judgements 217. Learned counsel has also relied on a judgement of a Division Bench of this court in N.C. Sharma Vs. Union of India and Ors. reported in A.T. Full Bench Judgements 2002-2003 212. Reliance was also placed in the judgement of the Central Administrative Tribunal in Kartar Singh Versus Central Railway and anr. in O.A. No. 588 of 2002 decided on 30.12.2003. The order of C.A.T. was upheld by this court as also by the Apex Court. Considering that it is submitted that it was not open to the respondents to have made deductions and consequently the order of C.A.T. is liable to be set aside.

. On the other hand, on behalf of the respondents, their learned counsel contends that the relevant rules have been revised in 1993 and are now known as the Railway Services (Pension) 1993 which came into force in 1993. In terms of Rule 15, it was open to the Respondents to make deductions. All the earlier

judgments were based on the rules as they stood before the revised rules came into force, which had been interpreted to mean that the deductions could be made only on admitted and obvious dues. It was then submitted that the judgement relied on by the Petitioner was before the amendment of the rules and as such would not be binding. It is also pointed out that a Division Bench of this court in N.C. Sharma (supra) had relied upon the judgment in the case of V.N. Warrier which has been overruled by the apex Court in O.N.G.C. Ltd. and Anr. Vs. V.U. Warrier 2005(4) Supreme 616. It is therefore, submitted that the order of the tribunal cannot be faulted with and consequently is liable to be set aside.

6. The relevant portion of Rule 15, may now be reproduced :

> "15. Recovery and adjustment of Government or railway dues from pensionary benefits -
>
> (1) It shall be the duty of the head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against he retiring railway servant shall be regulated in accordance with the provisions of sub rule (4).

(3) For the purpose of this rule, the expression "railway or Government dues" includes :

(a) dues pertaining to railway or Government accommodation including arrears of license fee, if any;

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as post Office or Life Insurance premia, losses (including short

collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

(4) (i) A claim against the railway servant may be on account of all or any of the following :-
(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other Government dues such as over-payment on account of pay and allowances other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) non-Govenrment dues.

(ii) Recovery of losses specified in sub clause (a) of clause (i) of this sub rule shall be made subject to the conditions laid down in Rule 8 being satisfied from recurring pensions and also

commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub para (i) which cannot be made in terms of Rule 8, and any recovery on account of sub clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant."

. A perusal of the said rule would make it clear that there is power conferred to ascertain and assess the government or railway dues payable by the railway servant due for retirement. The Government dues as ascertained and assessed and which remained outstanding at the time of retirement can be adjusted against the amount of retirement gratuity or death gratuity or

terminal gratuity and the recovery shall be regulated in accordance with the provisions of sub rule 4. Under Sub Rule 3 expression railway or Government dues includes the dues pertaining to railway or Government accommodation including arrears of license fee, if any. Similarly sub rule (4) provides that the claim may be on account of the dues, such as house rent and sub rule 4(2) permits recovery without the consent of the retiree.

7. The only question therefore, which remains for consideration is whether the dues for overstaying beyond the permitted period can be deducted. Let us therefore, look at the case laws which were relied upon by the respondents and considering Rule 323 of the Railway Pension Rules, as it then stood and which read as under :

> "(a) losses including short collection in freight charges shortage in stores) caused to the government as a result of negligence or fraud on the part of the railway servant while he was in service; (b) other government dues such as overpayment on account of pay and allowances or

admitted and obvious dues such as house rent, post office, life insurance prima, outstanding advance etc. (c) non-government dues."

. It would be clear from a reading of that Rule that the other government dues which could be recovered had to be admitted and obvious dues. In Madan Mohan (supra), the employee had retired on 31.7.1982. On account of overstaying, he was charged damages. The Apex court while holding that the amount cannot be deducted, held that there was no power to recover penal charges as it does not fall within the scope of Rule 323 at all as the dues contemplated had to be admitted and or obvious dues.

. N.C. Sharma (supra) was again a case before the Railway Service (Pension) Rules came into force and based on Rule 323 as it was then existing. The Petitioner therein had retired on 31.10.1993. The learned Division Bench though rules of 1993 were brought to its attention, relied on the judgment in the case of Madan Mohan Prasad (supra) by holding that the same is not within the expression admitted and obvious as contended in rule 323. Reliance was also placed by

the Division Bench Judgment of this court in V.U. Warrier (supra). Warriar has since been reversed by the Apex court. What was under consideration was Regulation 5 of Rules of the O.N.G.C. in the matter of recovery of dues which read as under :

> "The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission's dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer, as the case may be. "

. The Apex court in Warrier (supra) also considered the case of Wazir Chand Vs. Union of India and Ors. (2001) 6 S.C.C. 596. This case was considered in Gorakhpur University case. It appears that under the regulations of the University, there were no provisions for waiving penal rent. In Gorakhpur University case, though the employee retired in 1990, he kept the quarters upto 1996 and the University chose not to take

any action to evict him. On the contrary, it acquiesced in his occupation by accepting regularly the normal rent. The Judgment was then explained. Construing the rule as set out, the Government held that it was open to the Employer to make deductions. Whilst dismissing the Petition against the order of C.A.T. in Kartarsingh (supra), this court relied on the judgment in Madan Mohan to uphold the order of C.A.T. Kartarsingh had retired on 13.9.1992 before the Rules of 1993. The Apex Court merely dismissed the application for special leave.

8. It is thus clear that the judgement in N.C. Sharma, relied upon by the learned Division Bench was based on the old rules and the judgment in Warrier has since been reversed by the Apex Court and the Judgment in Madan Mohan (supra) was in respect of the rules in force before 1993.

. We have earlier referred to the Rules and its salient features. A duty is cast under the rules on the head of office for ascertaining and assessing the government or railway dues. This will include the dues of government accommodation including arrears of

licence fees. The licence fee would be chargeable based on the rules in force. Similarly the rules also provide for charging of damage rent for stay in excess. The Petitioner was informed by the communication of October, 1999 as to how the damage rent has been calculated. The expression railway dues include dues for government accommodation which includes both licence fees as also damages for over stay. Sub Rule (4) makes it clear that these dues can be dues such as house rent. Normally house rent would be deducted from the salary for the month. Therefore, the expression Government dues will also include those dues towards house rent over and above house rent normally due and payable on account of overstay. A specific power has been conferred on the Head of Office to make recovery of these dues after computing the same from the retirement, death, terminal or service gratuity. We are therefore, of the view that considering the rules of 1993 as they stand and the judgment of the Apex Court in Warriar’s case, the rules as now in existence having dropped the words "admitted and obvious" provides for recovery of licence fees for over staying provided these are rules in force, setting out the manner in which the Government servant would be charged

for overstaying. In the case of Railways, there are such rules. A railway employee in service or retired, aggrieved by the action of deduction can dispute the same before an approprite forum. There is no need for the Railways to move under the provisions of the Public Premises Eviction Act.

. We are clearly of the opinion that the order of the tribunal requires no interference. Consequently Petition dismissed. Rule discharged. No order as to costs.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)